141 U 823

RECORD, CASE No. 15,055.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1,085.

JOHN SUTLIFF, PLAINTIFF IN ERROR,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, STATE OF COLORADO.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JUNE 17, 1892.

"extention screw-caps L L, all substantially as and for the "purposes herein set forth."

On page 50 it will be seen that quite a large portion of the specification was cut out by the same amendment as that which changed the claims.

It only requires a cursory examination to see that the original and amended claims are in fact materially different.

L. L. BOND.
C. L. PICKARD.
Per Jeff. Bliss.

NOV. 15, 1865.

141 U 8230

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 9, 1892.

1 United States Circuit Court of Appeals, Eighth Circuit, October Term, A. D. 1891.

JOHN SUTLIFF, Plaintiff in Error, *vs.* THE BOARD OF COUNTY COMMISSIONERS of the County of Lake, State of Colorado, Defendant in Error.	No. 33. In Error to the Circuit Court of the United States, District of Colorado.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, Missouri, on this twenty-fourth day of May, 1892, hereby certifies that upon the record on file in said court in the cause wherein John Sutliff is plaintiff in error and The Board of County Commissioners of the County of Lake, State of Colorado, is defendant in error, and which cause is now pending before this court upon a writ of error duly issued to the United States circuit court for the district of Colorado, the following facts are made to appear:

1st. That the county of Lake was duly created and organized by an act of the legislature of the State of Colorado, approved February 8th, 1879.

2nd. That the constitution of the State of Colorado, adopted March 14th, 1876, and in force in 1881, contains the following provision:

SECTION 6. "No county shall contract any debt by loan in any form except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit: Counties in which the assessed valuation of taxable property shall exceed five
2 millions of dollars, one dollar and fifty cents on each thousand dollars thereof; counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof, and the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited, unless when in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned; provided, that this section shall not apply to counties having a valuation of less than one million of dollars."

3 3rd. The legislature of Colorado passed an act, approved March 24th, 1877, sections 21 and 30 of which are as follows:

SEC. 21. "When the county commissioners of any county shall deem it necessary to create an indebtedness for the purpose of erecting necessary public buildings, making or repairing public roads or bridges, they may, by an order entered of record specifying the amount required and the object for which such debt is created, submit the question to a vote of the people at a general election; and they shall cause to be posted a notice of such order in some conspicuous place in each voting precinct in the county, for at least thirty days preceding the election, and all persons voting on that question shall vote by separate ballot, whereon is placed the words 'for county indebtedness,' or 'against county indebtedness;' such ballots to be deposited in a box provided by the county commissioners for that purpose, and no person shall vote on the question of indebtedness unless he shall have the necessary qualifications of an elector as provided by law, and shall have paid a tax upon property assessed to him in such country for the year immediately preceding, and if, upon canvassing the vote, (which shall be canvassed in the same manner as the vote for county officers) it shall appear that a majority of all the votes cast are for county indebtedness, then the county commissioners shall be authorized to contract the debt in the name of the county; provided, that the aggregate amount of indebtedness of any county, exclusive of debts contracted prior to July 1, 1876, in which the assessed valuation of property shall exceed one million of dollars, for all purposes, shall not be in excess of the following ratio, to wit: Counties in which the assessed valuation of property shall exceed five million- of dollars, six dollars on each thousand dollars thereof; counties in which the assessed valuation of property shall be less than five millions, and exceed one million of dollars, twelve dollars, on each thousand dollars thereof."

SEC. 30. "It shall be the duty of the board of county commissioners of each county to make out semi-annual statements at the regular sessions in January and July, at which times they shall have such statements published in some weekly newspaper published in the county, if there be such published; and if there be no newspaper published in the county, such commissioners shall cause such statement to be posted in three conspicuous places in said county, one of which shall be the court-house door; and such statement shall show the amount of debt owing by their county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest that such debts are drawing, also a detailed account of the receipts and expenditures of the county for the preceding months, in which shall be shown from what officers and on what account any money has been received, and the amounts, and to what individuals and on what account any money has been paid and the amounts; and shall strike the balance, showing the amount deficit, if any, and the balance in the treasury, if any, and the statement thus made in addition to being published as before specified shall also be entered of record by the clerk of the board of county commissioners in a book to be by him kept for

that purpose only, which book shall be open to the inspection of the public at all times."

4th. On the first day of July, 1881, the county of Lake issued a series of bonds, ten in number, which were in the form following:

"No. 2. $500.

UNITED STATES OF AMERICA,
County of Lake, Colorado.

Road Bond.

5 Know all men by these presents, that the county of Lake, in the State of Colorado, acknowledges itself indebted and promises to pay to N. P. Seeley, or bearer, five hundred dollars for value received, redeemable at the pleasure of the county after ten years, and absolutely due and payable twenty years from the date hereof at the office of the treasurer of the county of Lake aforesaid, in the city of Leadville, in said county, with interest at the rate of ten per centum per annum, payable annually on the first day of July of each year, at the office of the county treasurer aforesaid, upon the delivery of the coupons hereto attached.

This bond is one of a series of five thousand dollars, which the board of county commissioners of said county have issued for the purpose of constructing roads and bridges by virtue of and in compliance with a vote of a majority of the qualified voters of said county at an election duly held on the 7th day of October, A. D. 1879, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, entitled 'An act concerning counties, county officers and county government,' and repealing laws on these subjects, approved March 24th, A. D. 1877, and it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond.

In testimony whereof, the board of county commissioners of said county of Lake has caused the seal of said county and the signature of its chairman to be hereunto affixed, and the same to be attested by the clerk of the county, at Leadville, this first day of July, A. D. 1881.

[SEAL.] JOS. PEARCE,
Chairman Board of County Commissioners.

Attest:

JOS. H. WELLS, *County Clerk.*"

6 5th. That at and previous to the issuance and sale of said bonds the said county of Lake was in fact indebted to an amount greater than that permitted by the limitation contained in the constitution and statute of Colorado as above cited, and therefore, as a matter of fact, the issuance of said series of bonds and the issuance of each one thereof created an indebtedness on part of said county of Lake in excess of the constitutional and statu-

tory limitation applicable to said county at the date of the issuance of said bonds.

6th. That said John Sutliff, a citizen of the State of Connecticut, bought six of said series of bonds, paying full value therefor, relying upon the recitals in the bonds contained and without making any examination into the facts that may appear upon the records of said county and without any actual knowledge of the facts other than such knowledge with which he may be held chargeable from the statements in the bonds and the constitution and statutes of the State of Colorado.

7th. That said county of Lake failed to pay the interest coupons attached to said bonds maturing on the first day of July, 1884, 1885, 1886, 1887, 1888, and 1889. Thereupon said John Sutliff brought the present action to recover the sum of three thousand dollars and interest, being the amount due him according to the terms of the coupons sued on.

8th. In defense of said action, among other defences, the county of Lake pleaded and averred that the said bonds held by said John Sutliff were illegal and void, for that the same were issued in violation of the provisions of section 6, article XI, of the constitution of the State of Colorado, hereinbefore cited, for the reason that the issuance of said bonds and each and every of them increased the indebtedness of said county to an amount in excess of the limitation established by the provisions of the constitution of said state.

7 And the said United States circuit court of appeals hereby further certifies that, to the end that it may properly decide the questions arising in said cause and presented by the assignment of errors therein filed, the said court desires the instruction of the Supreme Court of the United States upon the following questions and propositions of law, to wit:

I. In view of the provisions of the act of the legislature of Colorado, approved March 24th, 1877, providing for the making of a public record of the indebtedness and financial condition of the several counties in said State, was the said John Sutliff, plaintiff herein, when about to purchase the bonds sued on and issued under the provisions of said act of March 24th, 1877, charged with the duty of examining the record of indebtedness provided for in said act in order to ascertain whether the bonds he proposed to purchase were lawfully issued or whether the issuance thereof did not increase the indebtedness of the county beyond the constitutional limit?

II. Do the recitals found in said bonds estop the county of Lake, as against a purchaser thereof for value before maturity, from proving as a defense thereto that when said series of bonds were issued the indebtedness of the county already equaled or exceeded the amount of indebtedness which the county could legally incur under the provisions of the constitutional limitation already cited?

In witness whereof the undersigned judges holding the said United States circuit court of appeals for said eighth circuit have hereto set their hands this twenty-fourth day of May, A. D. 1892,

at St. Louis, Missouri, and ordered and directed that the foregoing certificate be filed in said circuit court of appeals and by the clerk of said court be duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL.
WALTER H. SANBORN.
OLIVER P. SHIRAS.

8 UNITED STATES OF AMERICA, }
Eighth Circuit. }

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the cause of John Sutliff, plaintiff in error, *vs.* The Board of County Commissioners of the County of Lake, State of Colorado, was duly filed in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Witnes my hand and official seal hereto appended, at St. Louis, Missouri, this twenty-fourth day of May, A. D. 1892.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit

9 [Endorsed:] U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 33. John Sutliff, plaintiff in error, *vs.* The Board of County Commissioners of Lake County. Questions certified to Supreme Court of the United States. Filed May 24, 1892. John D. Jordan, clerk.

Endorsed on cover: Case No. 15,055. U. S. circuit court of appeals, 8th circuit. Term No., 1085. John Sutliff, plaintiff in error, *vs.* The Board of County Commissioners of the County of Lake, State of Colorado. Filed June 17th, 1892.

1085
147118230

Office Supreme Court U. S.
FILED.
AUG 6 1892
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

JOHN SUTLIFF, Plaintiff in Error,

vs.

The Board of County Commissioners of Lake County,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

JOHN SUTLIFF, Plaintiff in Error,

VS.

The Board of County Commissioners of Lake County, Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

This action is brought to recover on coupons attached to $5,000 of bonds, issued by the Board of County Commissioners of Lake County, Colorado, under an act of the Legislature, approved March 24, 1877. Sections 21 and 22 of said act authorized the Board to issue bonds under certain conditions, all of which the recitals in the bonds show were fully complied with. A copy of sections 21 and 22 of the act of March 24, 1877, and also of one of said bonds is appended hereto.

The case was tried upon an agreed statement of facts in which it is admitted the plaintiff was a "bona fide purchase for value, without notice of defects or infirmities, other than appear upon the face of the bonds, and that the plaintiff is now the owner of said bonds and coupons." Transcript, page 15.

It is further admitted that the assessed valuation of property in said county was as follows: In the year 1879, $3,673,703; in 1880, $11,025,793; in 1881, $16,423,403. That the indebtedness of the county

at the date of the issuance of said bonds, was, in 1879, $44,072.43; in 1880, $66,154.75; in 1881, $30,002. The only question for the Court to pass upon in this case, under the admitted facts, is that of estoppel.

The act of the Legislature approved March 24, 1877, was sufficiently comprehensive to authorize their issuance. Section 21 of said act limited the issue to $6 on the $1,000, and was in conformity to the constitution of the state. The bonds upon their face recite that they were issued in compliance with a majority vote of the qualified electors of said county under and by virtue of the above mentioned act of the Legislature and that "all the provisions of said act have been fully complied with by the proper officers in the issuance of this bond."

Upon an examination of the face of the bonds, the act of the Legislature and the constitution of the state, the innocent purchaser had the right to presume they were legally issued, and that he would be protected against any defenses not disclosed by the law or the recitals in the bonds. Judge Dillon, in a late article in the Southern Law Review, after an examination of all the cases decided by the Supreme Court on the subject of municipal bonds, thus summarizes the law:

"The purchaser is bound to see that there exists legislative authority not in conflict with the state constitution for the issue of the bonds or commercial security of the municipal, public or quasi corporation, and is bound to notice the contents and recitals contained in the instruments: But if such bonds are duly executed by the proper officers, and if these officers are invested, by the true construction of the legislative enactment in that regard, with the power to decide whether conditions precedent have been performed, and the bonds contain a recital that such conditions have been complied with, or a recital which implies such compliance, whether the preliminary consists of facts in pais or facts of record—the issue of the bonds, under such circumstances, with such a recital, is conclusive against the municipality as to the facts recited or implied in the recital, and estops it, in an action by an innocent holder for value, before due, to show the contrary."

It must be conceded in this case that the plaintiff is entitled to recover, unless it is held that the county is not estopped from setting up the only defense relied upon—an over issuance of bonds, and that it was incumbent upon the purchaser not only to examine the law and the recitals, but also extrinsic evidence to ascertain if the facts certi-

fied to were true or false. Such a construction of the law would destroy the negotiability of this class of paper and render it valueless in the commercial world. It would be in direct conflict with a long line of decisions of the Supreme Court from the leading case of Knox County vs. Aspinwall, 21 Howard 539, decided in 1858 up to the present time. Repeated efforts have been made to induce the Court to change it's opinion upon this question, but it has in every decision on this question firmly adhered to the doctrine held in 1858. It may be confidently claimed that the law has been and is now on this question unchanged.

If the power is conferred by legislative enactment on municipal authorities to issue bonds, and if issued by the constituted officers, and the bonds recite that all the requirements of the law have been complied with, no defense can be maintained against an innocent holder, who purchased without notice of any infirmities not disclosed by the law or the recitals in the bonds.

If the bonds were issued in excess of authority, or wrongfully issued in any case, when such improper issue can only be ascertained by evidence outside the law and the bonds, the municipality is estopped from setting up the infirmity. I cite the following decisions from the Supreme Court of the United States in which this doctrine has been uniformly upheld:

Bissell vs. City of Jeffersonville,	24 Howard, 287
Woods vs. Lawrence County,	1 Black, 386
Moran vs. Commissioners, Miami County,	2 Black, 722
Mercer County vs. Hacket,	1 Wallace, 83
Gilpecke vs. City of Dubuque,	1 Wallace, 175
Van Hastrup vs. City of Madison City,	1 Wallace, 291
Meyer vs. City of Muscatine,	1 Wallace, 384
Supervisors vs. Schenck,	5 Wallace, 772
Pendleton County vs. Amy,	13 Wallace, 297
City of Lexington vs. Butler,	14 Wallace, 282
Grand Chute vs. Winegar,	15 Wallace, 355
Lynde vs. The County,	16 Wallace, 6
St. Joseph Township vs. Rogers,	16 Wallace, 644
Town of Coloma vs. Eaves,	92 U. S., 484
Town vs. Murdock,	92 U. S., 494
Converse vs. City of Fort Scott,	92 U. S., 503

Marcy vs. Town of Oswego,	92 U. S., 637
Commissioners of Douglass County vs. Bolles,	94 U. S., 104
Commissioners of Johnson County vs. January,	94 U. S., 202
Wilson vs. Salamanca,	99 U. S., 499
Insurance Company vs. Bruce,	105 U. S., 328
Pana vs. Bowler,	107 U. S., 539
Hawley vs. Fairbanks,	108 U. S., 543
Sherman County vs. Simons,	109 U. S., 735
Bank vs. Porter Township Trustees,	110 U. S., 608
Oregon vs. Jennings,	119 U. S., 74

If any question may be regarded as stare decisis, it is this protection afforded the innocent purchaser of municipal bonds who buys on the faith of the law and the certificate of the constituted authority. These bonds are treated by the Court the same as any other class of negotiable paper.

In the case of Marcy vs. Oswego Township, 92 U. S., 637, in which the defense of an over-issue of bonds was set up on page 639, Mr. J. Strong, in delivering the opinion of the Court says:

"In view of these facts, and of the decisions heretofore made by this Court, the first question certified to us cannot be considered an open one. We have recently reviewed the subject in Town of Coloma vs. Eaves, supra, page 484, and reasserted what had been decided before: Namely, that where legislative authority has been given to a municipality to subscribe for the stock of a railroad company, and to issue municipal bonds in payment of the subscription, on the happening of some precedent contingency of fact, and where it may be gathered from the legislative enactment that the officers or persons designated to execute the bonds were invested with power to decide whether the fact existed which was a necessary precedent to any subscription or issue of the bonds, their decision is final in a suit by the bona fide holder of the bonds against the municipality, and a recital in the bonds that the requirements of the legislative act have been complied with, is conclusive. And this is more emphatically true when the fact is one peculiarly within the knowledge of the persons to whom the power to issue the bonds has been conditionally granted." And on page 641 the Court further says:

"It is to be observed that every prerequisite fact to the execution and issue of the bonds was of a nature that required examination and decision. The existence of sufficient taxable property to warrant the

amount of the subscription and issue was no more essential to the exercise of the authority conferred upon the Board of County Commissioners than was the petition for the election, or the fact that fifty freeholders had signed, or that three-fifths of the legal voters had voted for the subscription. These are all extrinsic facts, bearing not so much on the authority vested in the Board to issue bonds, as upon the question whether that authority should be exercised. They are all by the statute, referred to the inquiry and determination of the Board, and they were all determined before the bonds and coupons came into the hands of the plaintiff. He was therefore, not bound when he purchased to look beyond the act of the Legislature and the recitals which the bonds contained."

This decision is approved and followed in Wilson vs. Salamanca, 99 U. S., 499, and also in Sherman County vs. Simons, 109, U. S., 735, in which last case the Court say, page 737:

"The defendant in error is found by the Circuit Court to be a bona fide holder for value. According to repeated decisions of this Court, being such, he was not bound to go behind the law and the recitals of the bonds to inquire into the amount of the county indebtedness. Marcy vs. Township of Oswego, 92 U. S., 637; Humbolt Township vs. Long, ib. 642; Wilson vs. Salamanca, 92 U. S., 499."

It will be found in the cases cited that bonds have been assailed on various grounds growing out of the wrongful acts or irregular proceedings of the municipal authorities, but in every decision their validity has been sustained when the power was conferred by law, the recitals sufficiently comprehensive and the bonds had passed into the hands of an innocent holder.

In the case of Moran vs. Commissioners of Miami County, 2 Black, 722; a number of defenses were claimed by the county. On page 724 the Court say:

"In our leading case upon the subject, that of the Commissioners of Knox County vs. Aspinwall et al., 21 Howard, 539; the suit having been brought for the interest due upon coupons annexed to one hundred and forty-two bonds, in which the main ground of defense was, that a Board of Commissioners had not power to execute them, and that on that account they were not binding upon the county of Knox, our answer and judgment was, that the bonds on their face import a compliance with the law under which they were issued; and that the purchasers of them were not bound to look further for evi-

dence of a compliance with the conditions annexed to the grant of power to issue them." Again on pages 731 and 732 the Court say:

"But the real point in this case, as made by the counsel for the plaintiff in error, and sustained in argument by numerous adjudicated cases, was, that it is declared in the bonds that they were issued by the Board of County Commissioners of Miami County by order or resolution, pursuant to the statute authorizing the county to borrow money, passed at a regular meeting of the board, to be used by the Peru and Indianapolis railroad, payable to the company, or bearer, for a loan to the county that the bona fide holders of the bonds, whether so by endorsement or delivery, had a right to infer that the bonds had been lawfully issued, by which the county of Miami is estopped in a suit for recovery of the interest from denying by pleas that it's bonds had been issued to the Peru and Indianapolis railroad for a loan of money to the county of Miami. We think and adjudge that the recitals in the bonds are conclusive, constituting an estoppel in pais upon the defendants in this suit." In the case of Mercer County against Hacket, 1 Wallace, 83; the county offered to prove the bonds had been illegally issued. The evidence was refused and the Court on page 93 say:

"We have decided in the case of Commissioners of Knox County vs. Aspinwall, 21 Howard, 545; that where the bonds on their face import a compliance with the law under which they were issued the purchaser is not bound to look further. The decision of the Board of Commissioners may not be conclusive in a direct proceeding to inquire into the facts before the rights and interests of other parties had attached; but after the authority has been executed, the stock subscribed, and the bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question." And on page 95 the Court further say:

"That these securities are treated as negotiable by the commercial usages of the whole civilized world, and have received the sanctions of judicial recognition, not only of this Court, but of nearly every state of the Union." And on page 96:

"Although we doubt not the facts stated as to the atrocious frauds which have been practised, in some counties, in issuing and obtaining these bonds, we can not agree to overrule our decisions and change the law to suit hard cases. The epidemic insanity of the people, the folly of the county officers, the knavery of railroad 'speculators,' are

pleas which might have just weight in an application to restrain the issue or negotiation of these bonds, but cannot prevail to authorize their repudiation, after they have been negotiated and have come into the possession of bona fide holders." In the case of Supervisors vs. Schenck, 5 Wallace, 772; it was claimed the bonds were not issued by the legal and proper authorities. On page 784 the Court say:

"Argument of the defendants proceeds upon the ground that if they show that the order for the election emanated from a wrong source, the plaintiff, although an innocent holder for value, cannot recover; but it is clear that in a case like the present, where the power to issue bonds was fully vested in the corporation, the proposition cannot be sustained. On the contrary, it is settled law that a negotiable security of a corporation, which upon it's face appears to have been duly issued by such corporation, and in conformity with the provisions of it's charter, is valid in the hands of a bona fide holder thereof, without notice, although such security was in point of fact issued for a purpose, and at a place not authorized by the charter of the corporation." In the case of City of Lexington vs. Butler, 14 Wallace, 282; Mr. Justice Clifford, on pages 295 and 296, says:

"Coupons attached as interest warrants to bonds for the payment of money, lawfully issued by municipal corporations, as well as the bonds to which they are attached, when they are payable to order and endorsed in blank, or are made payable to bearer, are transferable by delivery and are subject to the same rules and regulations, so far as respects the title and rights of the holders, as negotiable bills of exchange and promissory notes. Holders of such instruments, if the same are endorsed in blank or are payable to bearer, are as effectually shielded from the defense of prior equities between the original parties, if unknown to them at the time of the transfer, as the holders of any other class of negotiable instruments."

In the case of Grand Chute against Winegar, 15 Wallace, 355; the Court held that the town could not show by way of defense, against a bona fide holder, a want of compliance with the formalities of the law authorizing the issue of the bonds, or show FRAUD in their own agents in issuing them. In St. Joseph Township against Rodgers, 16 Wallace, the Court say, on pages 665 and 666:

"Knox County vs. Aspinwall, 21 Howard, 544; non-compliance with one of the conditions was clearly shown in that case, as the notices of the election required by law had not been given in any

form, but the decision was that the question as to the sufficiency of the notice and the ascertainment of the fact whether the majority of the votes had been cast in favor of the subscription was necessarily left to the inquiry and judgment of the county board, as no other tribunal was provided for the purpose, and the Court held that after the authority had been executed, the bonds issued, and they had passed into the hands of innocent holders, it was too late, even in a direct proceeding, to call the power in question, and that it was beyond all doubt too late to call the power in question to the prejudice of a bona fide holder of the bonds in a collateral way, which is attempted to be done in the case before the Court." In the case of the Town of Coloma vs. Eaves, 92 U. S., 484; the township set up as a defense that no legal notice of an election had been given to the voters as required under the statute. In his opinion, page 490, Mr. Justice Strong says:

"Apart from and beyond the reasonable presumption that the officers of the law, the township officers, discharged their duty, the matter has passed into judgment. The persons appointed to decide whether the necessary prerequisites to their issue had been completed have decided, and certified their decision. They have declared the contingency to have happened, on the occurrence of which the authority to issue the bonds was complete. Their recitals are such a decision, and beyond these a bona fide purchaser is not bound to look for the existence of things in pais. He is bound to know the law conferring upon the municipality power to give the bonds on the happening of some contingency; but whether that has happened or not is a question of fact, the decision of which is by law confided to others (to those most competent to decide it) and which the purchaser is, in general, in no condition to decide for himself." In the case of Commissioners, etc. vs. Bolles, 94 U. S., 104; where, among other defenses, it was claimed no legal election had been held, the Court on pages 108 and 109 say:

"Such then having been the authority of the Boad of Commissioners of Douglass County when the bonds now under consideration were issued, what must be the effect of the recitals they contain? The question has been frequently before us for decision, and it is no longer open for debate. In the late case of the Town of Coloma vs. Eaves, 92 U. S., 484; we considered it fully and reviewed many of our former judgments. We there held that when, by legislative enactment,

authority has been given to a municipality, or to it's officers, to subscribe for the stock of a railroad company, and to issue bonds in payment, but only upon some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the enactment that the officers of the municipality were invested with power to decide whether that condition had been complied with, their recital that it had been made on the bonds issued by them and held by a bona fide purchaser, is conclusive of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal. The recitals that we have now before us are that the bonds were executed and issued not only in virtue of, but in accordance with the acts of the Legislature, and in pursuance of and in accordance with the vote of a majority of the qualified electors of the county. They are untrue, if the Board had not followed the directions of the law, and if there had not been a popular vote at an election approving the issue of those bonds. The truth or falsehood of the assertion cannot be inquired into here; for, as we have said, the recitals are practically an announciation of the judgment of the Board, that all the steps required by the law had been taken." * * * *

"Behind such a recital, as we have seen, a bona fide holder for value is bound to look for nothing except legislative authority given for the issue of municipal bonds to railroad companies. He is not required to examine whether the conditions upon which such authority may be exercised have been fulfilled. He may rely upon the decision made by the tribunal selected by the Legislature."

In the case of Commissioners of Johnson County vs. January, 94 U. S., 202; it was contended by the county that the bonds were issued under an act which was repealed before the issuance. The Court in substance held that the bonds were not void for the reason that they purported to be issued under an act repealed, if at the time of issuance, another act was in force conferring such power. On pages 205 and 206 Mr. Justice Swayne says:

"This act, like the act of 1868, authorizes the commissioners to issue the bonds when the requirements of the law had been complied with. They were thus constituted a tribunal for the adjustment of all questions touching the subject. They were clothed with the power and charged with the duty to decide them. No appeal or review was provided for. Their issuing the bonds was the reflex and embodiment of their judgment that it was proper to do so. It complies with a

prior determination to that effect. The fact carries with it this presumption. The bonds recite that they were issued in conformity to law, and in pursuance of the election held on the 6th of April, 1869. It is true they refer to the wrong statute, but '*falsa demonstratio non nocet.*' The bad here does not hurt the good. The act of the commissioners was the act of the county, and the county is conclusively bound by what they have done. As between the county and a bona fide holder, no question involving the infirmity of the securities can be raised. The principle of estoppel applies, and it precludes the obligor from interposing such a defense." In Pana vs. Bowler, 107 U. S., 529; Mr. Justice Woods says, on pages 539 and 540:

"The bonds in question in this case recite on their face that they were issued by the township in compliance with the vote of the legal voters thereof at an election held on April 30, 1870, under and by virtue of the authority conferred by acts of the General Assembly of the state of Illinois, specifying the acts of February 26, 1867, and February 24, 1869, above mentioned. The Court has again and again decided that if a municipal body has power to issue bonds or other negotiable securities, dependent only on the adoption of certain preliminary proceedings, such as a popular election of the constituent body, the holder in good faith has the right to assume that such preliminary proceedings have taken place if the fact be certified on the face of the bonds by the authorities whose primary duty it is to ascertain it. Lynde vs. The County, 16 Wallace, 6; Town of Coloma vs. Eaves, 92 U. S., 484; Commissioners vs. January, 94 id. 202; County of Warren vs. Marcy, 97 id. 96."

I might quote from the decisions of many other cases where the language of the Court on the question of estoppel is equally emphatic and firm in refusing to allow any inquiry outside the law and the bond, but it would be useless to cite additional authorities to sustain a principle which appears to be so clearly established and adhered to. It can hardly be conceived that the Supreme Court, after the numerous decisions it has rendered on this question, whatever may be the individual opinions of the judges who compose the Court, would change a rule which has been so repeatedly and clearly laid down. For over thirty years, in perfect reliance upon the protection assured by this long line of decisions, the investors in this class of paper have felt safe in it's purchase. The disastrous results which would follow to a large class of innocent persons upon a reversal of this doctrine of estoppel, can

hardly be estimated; and unless it can be clearly shown the Supreme Court has receded from it's decisions, I am confident the Court in this case will not disturb the law as settled by the tribunal of last resort.

I have been unable to find any opinion that would preclude a recovery in the case at bar. The agreed statement of facts shows the bonds were purchased by a bona fide holder, without notices of defenses, other than shown by the law and the bonds. The act of the Legislature before cited conferred power upon the Board of County Commissioners to issue the bonds, upon certain conditions therein mentioned; it limited the issue to six dollars on one thousand dollars, being the limitation provided by the constitution. The certificate on the face of the bonds shows that all the conditions were followed. The act of the Legislature is referred to and printed on the back, as additional information to the purchaser. The recitals show an election was duly had and that the requisite majority of the legal voters of the county favored their issuance, and to give further emphasis to their certificate, further recite:

"*And it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond.*"

The recitals are therefore as complete and perfect as could be made and are sufficient to protect the innocent purchaser, if the legal power was conferred by the Legislature within constitutional limitations. The act of March 24, 1877, was careful to prohibit the creation of an indebtedness in excess of the limit permitted by the constitution; so that in this case it must be admitted that the certificate comprehends all the prerequisites prescribed by the law, and that the law confers ample power, and expressly confines that power within constitutional limitations. The only question to determine is that of estoppel.

I repeat that no decision of the Supreme Court can be found that will sustain the defense relied upon. On a careful examination of cases cited by counsel for the defendant it will be found that they are decided upon other grounds and that the Court in every instance has cautiously avoided disturbing the settled law on this subject. It is unnecessary to review at length all the authorities cited and I will therefore only call attention to the two decisions on which counsel for defendant chiefly relies.

In the case of Dixon County against Field, 111 U. S., 83; the bonds were issued under an act of the Legislature of Nebraska, approved

February 15, 1869, as amended by act of February 17, 1875. The law as amended required a two-thirds vote of the electors of the county to authorize their issue and limited the amount of bonds to aid in the construction of railroads to ten per cent. of the assessed value of taxable property in the county. The constitution of Nebraska took effect November 1, 1875. The election on the issue of the bonds was held the 27th day of December, 1875, and resulted in a vote favoring their issuance; the constitution was then in force and provided:

"That donations of any county including it's subdivisions, in the aggregate should not exceed ten per cent. of the assessed valuation of the county," and further provide "That any city or county MAY, by a two-thirds vote, increase it's indebtedness five per cent. in addition to such ten per cent."

No act of the Legislature subsequent to the amended act of February 17, 1875, was passed to enable counties to increase the bonded indebtedness from ten to fifteen per cent. of the assessed valuation as permitted under the constitution. The bonds voted and issued exceeded ten per cent. but were less than fifteen per cent. of the assessed valuation. In other words they were in excess of the amount allowed under the act of the Legislature, but within the limit of the constitution. The recitals in the bonds relied upon as an estoppel were as follows, page 91:

"This bond is one of a series of eighty-seven thousand dollars issued under and in pursuance of an order of the County Commissioners of the county of Dixon, in the state of Nebraska, and authorized by an election held in said county on the twenty-seventh day of December, A. D., 1875, and under and by virtue of chapter 35 of the general statutes of Nebraska, and amendments thereto, and the constitution of the said state, article XII., adopted October, A. D., 1875."

These bonds were issued in accordance with the legislative enactment and the constitution, and the facts stated in the certificate were true; so that the question of estoppel did not arise. The ground upon which the Court held the bonds void was, that the issue in excess of ten per cent. was without authority of law, by *statutory enactment*, and that the constitution did not *ex proprio vigore* empower the county to issue bonds in excess of ten per cent. on the assessed valuation without additional legislation; that the constitutional provision was not a direct delegation of power to the municipality, but authority conferred upon the Legislature to permit, by further enactment, an issue of

bonds not exceeding fifteen per cent., and as the Legislature failed to pass such a law after the constitution went into effect and when the bonds were voted, they were without authority of law. On page 89, the Court say: "We cannot think it was any part of the purpose of the constitution of Nebraska to enable a county either to add to it's existing or it's authorized indebtedness any increase without the express sanction of the Legislature." While the certificate of the commissioners was true "that the bonds were issued by virtue of the constitution," their certificate could not validate the bonds. It was a question of law for the courts to decide and not of fact for the municipal authorities, whether the constitution, by it's own ~~free~~ force, conferred IMMEDIATE power on the board or whether it was necessary to await legislative action. In this opinion Mr. Justice Matthews distinguishes this case from that of Marcy vs. Township of Oswego and many others cited on page 94 where the question of estoppel was sustained, and in no part of his opinion does he attempt to disturb this doctrine.

In the case of Lake County against Graham, 130 U. S., 674; $500,000 bonds were issued by the county under an act of the Legislature, entitled, "An Act to Enable the Several Counties of the State to Fund Their Floating Indebtedness." Approved February 21, 1891. Among the provisions of said act was the following:

"The whole amount of bonds issued under this act shall not exceed the sum of the COUNTY INDEBTEDNESS at the date of the first publication of the above mentioned notice, and the amount shall be determined by the commissioners, and a certificate made of the same, and made a part of the records of the county; and any bond issued in excess of this sum shall be null and void." Section 6, article II., of the constitution of Colorado, which was in force at the time of the issuance of the bonds provided as follows:

"No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to-wit: Counties in which the assessed valuation of taxable property shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof; and the aggregate amount of indebtedness of any county, for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not

at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceeding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years; and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned: Provided, that this section shall not apply to counties having a valuation of less than one million dollars.'"

The bonds contained the following recitals: "This bond is one of 710 funding bonds, each of like date, comprised in three series, designated 'A,' 'B' and 'C,' respectively, series 'A' consisting of 450 bonds for the sum of one thousand dollars each, numbered from 1 to 450, both numbers inclusive; series 'B,' consisting of 60 bonds for the sum of five hundred dollars each, numbered from 451 to 510, both inclusive; and series 'C' consisting of 200 bonds for the sum of one hundred dollars each, numbered from 511 to 710, both numbers inclusive; the whole amounting to five hundred thousand dollars, which the Board of County Commissioners of said Lake County have issued under and by virtue of and in full compliance with an act of the General Assembly of the state of Colorado entitled, 'An Act to Enable the Several Counties of the State to Fund their Floating Indebtedness,' approved February 21, 1881: And it is hereby certified that all the provisions and requirements of said act have been fully complied with by the proper officers in the issuance of this bond. It is further certified that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of said county of Lake, voting on the question at a general election duly held in said county on the 8th day of November, A. D., 1881. The faith and credit of the county of Lake are hereby pledged for the punctual payment of the principal and interest of this bond.

In testimony whereof the Board of the County Commissioners of said county of Lake has caused this bond to be signed by it's chairman, countersigned by the county treasurer, and attested by the county clerk, under the seal of the county, this 2nd day of January, A. D., 1882. Attest: .....County Clerk.

.....Chairman Board of County Commissioners. [County Seal.]"

In the act authorizing the issue of these bonds no limit was prescribed, except that *they should not exceed the county indebtedness*, while the constitution expressly prohibited an issue over a fixed percentage of the assessed valuation of the taxable property of the county. The County Board certified that they were issued in full compliance with the above act of the Legislature, but did not certify that they were issued in conformity to the constitution. All the cases hold that the purchasers of this class of paper must, in order to protect themselves, take notice of the law. An examination of the Legislative enactment would only enable them to ascertain the extent of power therein conferred, but they must also see if that power is within constitutional bounds. Mr. Justice Lamar in his opinion says: "Nothing better is settled than this rule: That the purchaser of bonds, such as these, is held to know the constitutional provisions and the statutory restrictions bearing on the question of authority to issue them, also the recitals of the bonds he buys; while, on the other hand, if he acts in good faith and pay value he is entitled to the protection of such recitals of facts as the bonds may contain. The statute, on the other hand, charges the purchaser with knowledge that the county commissioners were to issue bonds at par in exchange for such warrants of the county as were themselves issued prior to the date of the first publication of the notice provided for; that the only limitation on the issue of bonds in the statute was that the bonds should not exceed in amount the sum of the county indebtedness on the day of notice aforesaid; that while the commissioners were empowered to determine the amount of such indebtedness, yet the statute does not refer that board, for the elements of it's computation, to the construction or to the standards prescribed by the constitution, but leaves it open to them, without departing from any direction of the statute, to adopt solely the basis of the county warrants. The recitals of the bonds were merely to the effect that the issue was "under, and by virtué of, and in full compliance with the statute; that all the provisions and requirements of said act have been fully complied with by the proper officers in the issuing of this bond;" and that their issuance was "authorized by a vote of a majority of the duly qualified electors, etc." No express reference being made to the constitution, nor any statement made that the constitutional requirements had been observed.

An inspection, both of the act of the Legislature and the constitution of the state would show that there were two different limitations provided, and as the recitals failed to show that the bonds were issued in conformity to the constitution and contained no statement that imported a compliance with the conditions it imposed, it became incumbent upon the purchaser to ascertain from an examination of the county records, or other sources of information, in order to determine whether the commissioners had conformed to it's requirements. It was necessary to know as a question of fact, that the county indebtedness was not in excess of 86 on the thousand; and this fact could not be ascertained from the law or the certificate on the bonds. The recitals spoke the truth. The bonds were issued in compliance with the act of the Legislature approved February 21, 1881. So that the question of estoppel did not arise. Mr. Justice Lamar, in his opinion, says:

"There is therefore no estoppel as to the CONSTITUTIONAL question, because there is no recital in regard to it." And again he says:

"These being exactions of the constitution itself, it is not within the power of a legislature to dispense with them, either directly or indirectly, by the creation of a ministerial commission whose findings shall be taken in lieu of the facts."

There is no inference to be drawn from the opinion in this case that the Court intended to disturb the settled law of estoppel when it was sustained by the facts. Upon the contrary the Court say: "There was no estoppel," and therefore the decision was upon other grounds which I have endeavored to explain.

The case of Buchannan against Litchfield, 102 U. S., 278, is very similar to that of Lake County against Graham, supra. The constitution of Illinois prescribed the limit of municipal indebtedness, the bonds were issued under an act of the Legislature authorizing cities to construct water works and for that purpose to appropriate and borrow money and levy and collect a general tax in the same manner as other municipal taxes were levied and collected. The act did not provide that said indebtedness should be confined within the limits of the constitution. The bonds recited that they were issued under autority of the act of the Legislature and the ordinace of the city, but as in the Lake County case, did not purport to be issued under the requirements of the constitution. The question of estoppel did not arise and the Court decided against the validity of the bonds for substantially

the same reasons stated in the Lake County case. On page 290 the Court say:

"As therefore neither the constitution nor the statute prescribed any rule or test by which persons contracting with municipal corporations should ascertain the extent of their existing indebtedness, it would seem that if the bonds in question had contained recitals which, upon any fair construction, amounted to a representation upon the part of the constituted authorities of the city that the requirements of the constitution had been met; that is, that the city's indebtedness, increased by the amount of the bonds in question, was within the constitutional limit; then the city, under the decisions of this Court, might have been estopped from disputing the truth of such representations as against a bona fide holder of it's bonds."

And again on page 292: "Returning to the case in hand, it will be observed that the bonds issued by the city of Litchfield contain no recital whatever of the circumstances which, under the constitution of the state, must have existed before the city could legally incur the indebtedness for which the bonds were issued. They purport, it is true, to be issued under the authority of the act of April 15, 1873, and in pursuance of the ordinance of the city based upon that statute. But that statute does not expressly restrict the exercise of the power to erect and maintain a system of water works to cases in which the aggregate indebtedness of the city was within the limit which the constitution delared no municipal corporation should exceed. Nor does the city ordinance recite or state, even in general terms, that the proposed indebtedness was incurred in pursuance of or in accordance with the constitution of the state, or under the circumstances which permitted the issue of the bonds. Consequently, a recital that the bonds were issued under the authority of the statute, and in pursuance of the city ordinance, did not necessarily import a compliance with the constitution. Had the bonds made the additional recital that they were issued in accordance with the constitution, or had the ordinance stated, in any form, that the proposed indebtedness was within the constitutional limit, or had the statute restricted the exercise of the authority therein conferred to those municipal corporations whose indebtedness did not, at that time, exceed the constitutional limit, there would have been ground for holding that the city could not, as against the plaintiff, dispute the fair inference to be drawn, from such recital or statement, as to the extent of it's existing indebtedness."

In the case of the Town of Oregon against Jennings, 119 U. S., 74; cited with approval by Mr. Justice Lamar in Lake County against Graham, supra, Mr. Justice Blatchford, who delivered the opinion of the Court, says: "In respect to this compliance with the conditions imposed by the vote of the people, whether the question is to be regarded as arising under the provision of the constitution or that of a statute, it must equally be regarded as concluded by the recital in the bonds made by the supervisor and the town clerk."

In the latest decisions of the Supreme Court the doctrine of estoppel is maintained and the former decisions of that Court upon the subject are referred to and sustained. See Board of Commissioners vs. Lewis, 133 U. S., 198; also Township of Bernard vs. Morrison, 133 U. S., 523; both decided in 1890.

These recent decisions are conclusive evidence that the Court did not in the Dixon County or Lake County cases, or in any decision of that Court previously made, intend to disturb the rule of estoppel so long adhered to and repeatedly affirmed.

The bonds in suit were only $5,000 in all, issued for a legitimate and proper purpose, the proceeds used in improving the highways of the county. It is to be presumed that the public received a full consideration for the amount of debt contracted, so that in this case there is no defense of fraud or other wrong claimed by the defendant. The holder of the bonds purchased them in good faith for value and without notice of defects which he could have discovered from an examination of the constitution, the statute of the state or the recitals in the bonds; and the only ground upon which the county relies is that the law of the state and the certificate of the officers of the municipality afford no protection to an innocent purchaser; that notwithstanding ample power has been conferred and the recitals of the municipal authorities show the power has been legally exercised and within constitutional limits, the paper he purchased is worthless if the officers whose duty it was to pass upon questions of fact, have certified falsely; that there is no estoppel, and no protection unless upon examination, the facts are found to correspond with the recitals. Such a rule would destroy all confidence in this class of negotiable paper and would probably entail greater loss upon the commercial world than any decision ever rendered by a court. The question of estoppel is fully and fairly presented in this case and I again assert with perfect confidence that the Supreme Court has uniformly maintained this

principle when the power was delegated and the certificate was ample.

Fortunately the county of Lake has sustained no loss, but so far as the evidence shows received full compensation for the bonds sued upon, but if there were a loss it should fall upon the party who caused it. In the language of the Court in Orleans vs. Platt, 99 U. S., 676–682, "Where one of two innocent persons must suffer a loss, and one of them has contributed to produce it, the law throws the burden upon him, and not upon the other party."

Since the preparation of this brief the case of the Board of County Commissioners of Chaffee County vs. Potter, Supreme Court Reporter, volume XII., page 216, has been decided and has settled all the questions contended for in favor of the plaintiff in error. The act of the Legislature of Colorado, March 21, 1881, under which the bonds in the above case were issued, did not confine their issue within the limit of the constitution, but provided that "The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness. The act of March 24, 1877, under which the bonds in suit were issued, limited the amount as provided in the constitution." Section 21 of said act is in exact conformity with the constitution. The certificate of the commissioners, "That all the provisions of said act have been fully complied with by the officers in the issuing of this bond," necessarily implies that the bonds were not in excess of the constitutional limitation.

The agreed statement of facts shows that the series of bonds issued in this case, $5,000, was far below the amount the county was allowed to issue under the law. So that an examination of the bonds would not disclose the fact that the whole issue of $5,000 was in excess of the limit provided by the act of the Legislature and the constitution of the state.

In the language of the Court in the case cited, "The purchaser might even know, indeed it may be admitted he would be required to know the assessed valuation of the taxable property of the county, and yet he could not ascertain by reference to one of the bonds (in this case to all of the bonds) and the assessment roll whether the county had exceeded it's powers under the constitution in the premi"

J. W. Malone
Atty. for Def'ts in

PART OF AN ACT,

ENTITLED

An Act Concerning Counties, County Officers and County Government, and Repealing Laws on these Subjects.

448. SEC. 21. When the county commissioners of any county shall deem it necessary to create an indebtedness for the purpose of erecting necessary public buildings, making or repairing public roads or bridges, they may, by an order entered of record specifying the amount required and the object for which such debt is to be created, submit the question to a vote of the people, at a general election; and they shall cause to be posted a notice of such order in some conspicuous place in each voting precint in the county, for at least thirty days preceeding the election, and all persons voting on that question shall vote by separate ballot, whereon is placed the words "for county indebtedness," or, "against county indebtedness;" such ballots to be deposited in a box provided by the county commissioners for that purpose, and no person shall vote on the question of indebtedness unless he shall have the necessary qualifications of and elector as provided by law, and shall have paid a tax upon property assessed to him in such county for the year immediately preceding, and if, upon canvassing the vote, (which shall be canvassed in the same manner as the vote for county officers) it shall appear that a majority of all the votes cast are for county indebtedness, then the county commissioners shall be authorized to contract the debt in the name of the county: PROVIDED, That the aggregate amount of indebtedness of any county exclusive of debts contracted prior to July first, 1876, in which the assessed valuation of property shall exceed one million of dollars, for all purposes, shall not be in excess of the following ratio, to-wit: Counties in which the assessed valuation of property shall exceed five millions of dollars, six dollars on each thousand dollars thereof; counties in which the assessed valuation of property shall be less than five millions, and exceed one million of dollars, twelve dollars on each thousand dollars thereof.

449. SEC. 22. The county commissioners, when authorized as provided in section twenty-one of this act, shall make and issue coupon bonds of the county, not exceeding the amounts specified in the pre-

ceding section, in counties which have an assessed property valuation exceeding one million of dollars, payable at the pleasure of the county, ten years after the date of their issuance, but absolutely due and payable twenty years after such date, bearing interest at the rate of not exceeding ten per cent. per annum, from their date until paid. Said interest payable on the first day of April of each year, and the principal, when due, at the office of the county treasurer of the county, and the county commissioners shall prescribe the form of said bonds, and the coupons thereto; and to provide for the annual interest accruing on the bonds, they shall levy annually a sufficient tax to fully discharge such interest; and for the ultimate redemption of such bonds, they shall levy annually after ten years from the date of such issuance, such tax upon all taxable property in their county as shall create a yearly fund equal to ten per cent. of the whole amount of such bonds issued; and all taxes for interest on, and the redemption of such bonds shall be paid in cash only, and shall be kept by the county treasurer as a special fund, to be used in the payment of interest on, and redemption of such bonds only; such taxes to be levied and collected as other taxes.

NUMBER..... $500.00.

UNITED STATES OF AMERICA,

COUNTY OF LAKE, COLORADO.

ROAD BOND.

KNOW ALL MEN BY THESE PRESENTS, that the County of Lake in the State of Colorado, acknowledges itself indebted, and promises to pay to N. P. SEELEY or bearer FIVE HUNDRED DOLLARS for value received, redeemable at the pleasure of the county after ten years, and absolutely due and payable twenty years from the date hereof at the office of the Treasurer of the County of Lake aforesaid, in the City of Leadville, in said county, with interest at the rate of ten per centum per annum, payable annually on the first day of July of each year, at the office of the County Treasurer aforesaid, upon delivery of the coupons hereto attached.

This bond is one of a series of Five Thousand Dollars, which the Board of County Commissioners of said county have issued for the purpose of constructing Roads and Bridges by virtue of and in compliance with a vote of a majority of the qualified voters of said county, at an election duly held on the 7th day of October, A. D., 1879, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, entitled "An Act concerning counties, county officers and county government and repealing laws on these subjects," approved March 24th, A. D., 1877, and it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond.

IN TESTIMONY WHEREOF, the Board of County Commissioners of said County of Lake has caused the seal of the said County, and the signature of its chairman to be hereunto affixed, and the same to be attested by the clerk of the county at Leadville, this first day of July, A. D., 1881.

JOSEPH PEARCE,
Chairman Board of County Commissioners.

L. S.

Attest: JOS. H. WELLS, County Clerk.

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Office Supreme Court U. S.
FILED.
OCT 26 1892
JAMES H. McKENNEY,
CLERK.

1085

CASE NO. 15,055.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

JOHN SUTLIFF, Plaintiff in Error,
vs.
THE BOARD OF COUNTY COMMISSIONERS of the County of Lake, State of Colorado, Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

NUMBER.....

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This bond is one of a series of Five Thousand Dollars, which the Board of County Commissioners of said county have issued for the purpose of constructing Roads and Bridges by virtue of and in compliance with a vote of a majority of the qualified voters of said county, at an election duly held on the 7th day of October, A. D., 1879, and under and by virtue of and in compliance with an act of the General Assembly of the State of Colorado, entitled "An Act concerning counties, county officers and county government and repealing laws on these subjects," approved March 24th, A. D., 1877, and it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond.

IN TESTIMONY WHEREOF, the Board of County Commissioners of said County of Lake has caused the seal of the said County, and the signature of its chairman to be hereunto affixed, and the same to be attested by the clerk of the county at Leadville, this first day of July, A. D., 1881.

JOSEPH PEARCE,
Chairman Board of County Commissioners.

Attest:
L. S.
JOS. H. WELLS, County Clerk.

147 U.S. 230

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
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085

CASE NO. 15,055.

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The certificate shows that the bonds in question were issued in violation of the constitution and the statute. It shows further, that the plaintiff in error is a *bona fide* purchaser unless he is chargeable, by law, with notice of the invalidity of the bonds.

The circuit court of appeals desires instruction upon two propositions of law, but they may be resolved into one, and treated together.

The question involved will be submitted upon somewhat different, or rather additional, views, from those expressed by the trial court. (Sutliff vs. Lake County, 47 Fed. Rep. 106.)

The only question for discussion is as to whether the recitals in the bonds estop the county from alleging and showing that they were issued in violation of the constitution and the statute.

The recitals which are relied upon to work an estoppel are to the effect that the bonds were issued "*under and by virtue of and in compliance with*" *the act in question, and that* "*all the provisions of said act have been fully complied with by the proper officers in the issuing*" of the same.

None of the essential elements of an estoppel are shown to exist in this case. In order to constitute an estoppel there must have been a representation as to a *material fact*, by a person who knew or should have known the fact, with the *intention* that it should be acted upon; and the person to whom it was made must have been *induced to act* upon it, in ignorance of the truth. (7 Amer. and Eng. Ency. Law, p. 12; Griffith vs. Wright, 6 Colo. 248.)

The recitals that the bonds were issued "*under and by virtue of, and in compliance with*" the act, and that "*all the provisions of said act have been fully complied with by the proper officers in the issuing*" *of* the same, do not amount to a representation as to the *fact*, (even if it can be considered a *matter of fact*,) that they were issued within the limitation prescribed by the constitution and the statute. (School District vs. Stone, 106 U. S. 183.)

A representation is binding its full natural import, but its meaning cannot be enlarged to create an estoppel, (7 Amer. and Eng. Ency. p. 24), and, to be binding, *it must be plain and certain.* (Id. p. 14.)

There is no statement in the certificate that the purchaser ever understood that any recital in these bonds meant that they were *within any limitation of indebtedness*, much less that he was induced to take the bonds on the faith of such representation. It is recited that the purchaser paid full value for the bonds, relying upon the recitals therein contained and without any actual knowledge of their invalidity, but this is not equivalent to the proposition that he received the bonds on the faith of a supposed representation that they were issued within any limitation of indebtedness.

But the plaintiff could not have been, in contemplation of law, in ignorance of the fact that these bonds were issued in violation of the constitution and the law. He may have been without *actual knowledge* of the fact (and this may be admitted by the certificate) but he certainly had *constructive knowledge*, against which he was not entitled to rely upon any representation, however plain and unequivocal it might be.

The very act under which the bonds were issued prohibited an aggregate indebtedness of Lake county beyond six dollars on the thousand dollars of assessed valuation, and required a record to be made and kept, open to the inspection of the public, showing such indebtedness.

This court has held that a purchaser must look beyond the recitals in a bond for information in regard to the *assessed valuation*, because, under the law, a *record* is made of this fact. (Lake county vs. Graham, 130 U. S. 674.)

The act in question did not require the officers of the county to make any finding as to the aggregate indebtedness, for the express purpose of issuing these bonds; and hence, any recital upon the question would not work an estoppel. (Bank vs. Porter Tp., 110 U. S., 614; Dixon County vs. Field, 111 id. 92.)

If the county officers had made an express recital as to the *aggregate amount of indebtedness* it could not have supplied the place of the *public record* required by the law. (Millerstown vs. Frederick, 114 Pa. St. 435; 1 Dill. Mun. Cor. 4th Ed., § 529[a] and notes; Buchanan vs. Litchfield, 102 U. S. 292.

In accordance with the general presumption that all officers do their official duty, it must be presumed that this record was made and kept; but if it was not, the omission would place the purchaser on inquiry. (Id.)

We had supposed that the supreme court, in Lake County vs. Graham, (130 U. S. 674), had announced the proposition

that there could be no estoppel as against a constitutional limitation, and others placed the same construction upon that decision (1 Dill. Mun. Cor. 4th Ed., § 529[a] and notes), but it would seem that this has been qualified by the decision in Chaffee County vs. Potter, 142 U. S. 355.

This latter decision was under the funding act of 1881, which contained no provision for a record being made of the indebtedness of the county; and the statutory provision on that subject, embraced in the act under which the bonds in suit were issued, was not brought to the attention of the court.

It may be that this court has not actually adjudicated respecting the effect of an act authorizing the issuance of bonds, which contains a provision for a record in regard to existing indebtedness; but every intimation which has been made has been to the effect that such a record (the same as the record concerning assessed valuation) must not be ignored by a purchaser of bonds. If these two records show on their face that bonds are issued in violation of the constitution, and in violation of the very statute which requires the record to be made, and which is relied upon for authority for their issuance, then a false recital as to facts shown by these records will work no estoppel.

In Buchanan vs. Litchfield (102 U. S. 292) the court says: "As, therefore, neither the constitution nor the statute prescribed any rule or test by which persons contracting with municipal corporations should ascertain the extent of their existing indebtedness, it would seem that if the bonds in question had contained recitals," etc., and this language is quoted with approval in Chaffee County vs. Potter.

In Dixon County vs. Field (111 U. S. 83) the court said:

"So, if the fact necessary to the existence of the authority was by law to be ascertained, not officially by the officers charged with the execution of the power, but by reference to some *express and definite record* of a public character, then the true meaning of the law would be, that the authority to act at all depended upon the *actual objective existence* of the requisite fact, *as shown by the record*, and not upon its ascertainment and determination by anyone; and the consequence would necessarily follow, that all persons claiming under the exercise of such a power might be put to the proof of the fact, made a condition of its lawfulness, notwithstanding any recitals in the instrument."

There is no ground, in reason, for any distinction between a record relating to assessed valuation, and one relating to existing indebtedness. This court has always held that a

purchaser must look beyond the face of bonds and take notice of the assessed valuation, because this is a matter of record; and, for the same reason, it is clear that, when the law requires a record to be made of existing indebtedness, the purchaser of bonds must be chargeable with notice thereof.

The certificate assumes that the indebtedness of Lake County, at the time the bonds were issued, was made and published, as required by section 30 of the act under which the same were issued. Unless it was affirmatively shown that this record was not kept, the law would presume, as before stated, that it was kept, and that it spoke the truth; and, as to what the truth was, the certificate plainly states.

If the record was falsely made to show that the existing indebtedness was such that the bonds in question could be lawfully issued, this should have been established by plaintiff in error as a basis of his alleged estoppel.

In Borough of Rainsburg vs. Fvan (127 Pa. St. 74) the court said: "As the statement was not filed, how is the holder of the bonds affected? Manifestly he will be deemed to have full knowledge of all that should have appeared in the statement that ought to have been filed. In this case what must such a statement have been? This must be ascertained from the facts found." The same principle was asserted in Millerstown vs. Frederick (114 Pa. St. 435) and has been fully sanctioned by Judge Diljon. (Dill. Mun. Cor. 4th Ed. § 529[a] and notes.)

But we are not now dealing with a case where the statement required by law was not made and published. The question arising, under the certificate, is as to whether the purchaser is "charged with the duty of examining the record of indebtedness provided for in said act in order to ascertain whether the bonds he proposed to purchase were lawfully issued or whether the issuance thereof did not increase the indebtedness of the county beyond the constitutional limit."

The limitations prescribed by the constitution, and the statute under which the bonds were issued, are identical. Under both, two factors are to be considered, (1) the assessed valuation, and (2) the existing indebtedness or the indebtedness as affected by the proposed obligation. By the act under which these bonds were issued, the facts concerning both of these factors could be ascertained by an examination of the public records. A purchaser could, with no better excuse, close his eyes to one than he could to the other. To allow him to do either would be to repudiate the principle of a long line of adjudications made by this

court. (Nesbit vs. Riverside Independent District, 144 U. S. 610; Barnett vs. Dennison, 145 U. S., 135.)

On the whole case we submit that there is no shadow of ground upon which to hold that the defendant in error is estopped from showing the facts that were exhibited to the world, under the requirements of the very legislation which is relied upon to sustain these bonds. If there is an estoppel in this case then it would be impossible to frame constitutional or legislative restrictions upon municipal indebtedness which would afford any protection to the public.

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